

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

CJ

STATE OF MARYLAND

\*

v.

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C-10-CR-23-608

CHELSEA PHOENIX

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\* \* \* \* \*

MOTION FOR PROTECTIVE ORDER

Pursuant to Maryland Rule 4-266 (c), the Custodian of Records, Frederick County Department of Social Services (hereafter referred to as “the Department”), by and through Counsel, BokmanLaw, hereby request that this Court enter a Protective Order for the following reasons:

1. The State’s Attorney’s Office issued Subpoenas to the Custodian of Records, Frederick County Department of Social Services, in the above-captioned matter, commanding it to produce documents to the Frederick County State’s Attorney’s Office. Copies of the Subpoenas are attached.
2. The Subpoenas command the Custodian of Records, Frederick County Department of Social Services, to produce any and all records involving Austin Welling, Date of Birth: February 27, 2011, Bryce Welling, Date of Birth: August 22, 2013; and Charlotte Welling, Date of Birth: June 23, 2018.
3. The records of the Department contain information that is of a highly sensitive and personal nature about families and individuals who receive services from the Department. The information as it is compiled in the Department’s records is not public information.
4. Section 10-611 et. Seq. of the Maryland Code Annotated, “Access to Public Records” exempts the Department’s records from disclosure, even to parties of interest.

Additionally, Section 1-201 of the Human Services Article, Maryland Code Annotated formerly COMAR 07.02.07.18 and 07.01.07.01 through 07.01.07.12. protect the confidentiality of the agencies' records.

5. Further, Section 1-202, of the Human Services Article of the Maryland Annotated Code establish the confidentiality of child abuse and neglect records and the limited exceptions permitting their release.
6. In like manner Sections 1-201 through 1-204 of the Human Services Article of the Maryland Annotated Code provides that the Department's records are confidential, makes unauthorized disclosure of records a criminal offense, and mandates that a Court Order is required to authorize release of records in most instances. The Court has authority to deny the release of the Department's records under the above noted statute and its predecessor statute, Article 88A, Section 6, State v. Runge, 317 Md. 613, 566 A.2d 88 (1989). In Runge, the Court determined that the statute is intended to protect the confidential information in the Department's records, see also Freed v. Worcester Co. DSS, 69 Md. App. 447, 518 A.2d 159 (1986), where the Court noted that the authority of the Court to Order disclosure of information contained in the Department's records is not broad and that the mere fact that the [Department's] records may be the easiest way to obtain information does not justify a Court Order directing release of the information.
7. Records of the Department are confidential pursuant to the following Federal Statutes and Regulations:

42 U.S.C., Section 602 (a) and 45 C.F.R., Section 205.50 (AFDC);

42 U.S.C., Section 671 (a) (8), 45 C.F.R., Sections 205.50 (a) (1) (i) (B),

1355.21 and 1355.30 (Foster Care); 42 U.S.C., Section 620 et seq. and 45 C.F.R. Section 1355.21 (a), 1355.30 and 205.50 (Child Welfare Service);

42 U.S.C., Section 5103 (b) (2) (E) and 45 C.F.R., Section 1340.14 2020 (e) (8) (Food Stamps).

8. Executive or Governmental Immunity applies to the Department's records. See U.S. v. Nixon, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039, and Hamilton v. Verdow, 287 Md. 544, 414 A.2d 914 (1980).
9. The Maryland Annotated Code, Article of the Maryland Code, Annotated State Government Articles cited above indicate a strong legislative intent that information contained in the Department's records, be kept in strict confidence.
10. For this reason and on the grounds of executive governmental privilege, the Court should not Order disclosure of such information unless there is a compelling reason and nexus between the need for the information and the administration of the Department's programs.
11. While the Department's records may provide a convenient means to obtain certain information, the records are confidential pursuant to Federal and State statutes and regulations and may be released only pursuant to a Court Order. Indeed, even the United States Supreme Court has held that confidential State material may not be automatically disclosed to a criminal defendant charged with child abuse over the State's compelling interest in protecting its sensitive and confidential information and that access to this confidential State information may be achieved, at best, after an in camera review by the Court. Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989 (1987); see also, Zaal v. State, 584 A.2d 119 (1991) and 602 A.2d 1247 (1992) and Baltimore City Department of Social Services v. James Stein, et al., 328 Md. 1, 612 A.2d 880 (1992).
12. The Department believes its records are relevant in this matter; however, a Protective Order is necessary to protect information which could disclose the identity of the reporter

in this case or any other person whose life or safety is likely to be endangered by disclosing this information. Freed v. Worcester County Department of Social Services, 69 Md. 447, 518 A.2d 159, 162 (1986). In addition, only an information summary should be disclosed, COMAR 07.01.02.04F, as opposed to turning over copies of the record.

13. The Department requests the Court to sign an Order requiring the Social Worker to appear and limit the production of documents and/or testimony to the relevant information disclosed under the Protective Order.

WHEREFORE, the Custodian of Records and the Department respectfully request the Court to:

- A. Enter a Protective Order limiting access to information, if any, to the parties and their attorneys for use only in the captioned case and redacting any information concerning the identity of the reporter in this case or any other person whose life or safety is likely to be endangered by disclosing the information and limiting the Social Worker's testimony to the same.

A proposed Order is attached.

/s/ Robert S. Bokman  
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of Social Services and the Custodian of  
Records*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via MDEC this <sup>2nd</sup>~~17th~~ day of <sup>August</sup>~~July~~ 2023, to: Office of the State's Attorney – Frederick; and Office of the Public Defender – Frederick.

/s/ Robert S. Bokman  
Robert S. Bokman, Esquire